

EXHIBIT LL

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 In re:
4 THE FINANCIAL OVERSIGHT AND
5 MANAGEMENT BOARD FOR PUERTO
6 RICO,
7 as representative of
8 THE COMMONWEALTH OF PUERTO
9 RICO, et al.,

PROMESA Title III
Case No. 17 BK 3283(LTS)

10 Debtors.

11 In re:
12 THE FINANCIAL OVERSIGHT AND
13 MANAGEMENT BOARD FOR PUERTO
14 RICO,

PROMESA Title III
Case No. 17-CV-01685(LTS)
Case No. 17-BK-03566(LTS)

15 as representative of
16 THE EMPLOYEES RETIREMENT
17 SYSTEM OF THE GOVERNMENT
18 OF THE COMMONWEALTH OF
19 PUERTO RICO,
20 Debtor.

21 C O N F I D E N T I A L

22 VIDEOTAPED DEPOSITION OF
23 ANDREW SAMWICK, Ph.D.
24 Monday, June 17, 2019

25 Reported By:
26 Michael D. O'Connor, RMR, CRR, CRC

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09:39:32 1 White & Case on behalf of the Puerto
09:39:35 2 Rico Funds. Apologies.
09:39:40 3 MR. GUMBS: This is Sean Gumbs
09:39:40 4 with FTI Consulting on behalf of the
09:39:42 5 Official Committee of Retirees.
09:39:44 6 MR. DALSEN: Thank you. And if I
09:39:45 7 could just ask also the people on the
09:39:46 8 phone to please moot their end unless
09:39:49 9 they're going to speak just to keep
09:39:51 10 background noise down. Thank you.
09:39:57 11 VIDEOGRAPHER: You may swear in
09:39:59 12 the witness.

13 * * *

14
15 ANDREW SAMWICK, Ph.D.,
16 having been satisfactorily identified by a
17 Massachusetts drivers license and duly sworn
18 by the Notary Public, was examined and
19 testified as follows:

20 EXAMINATION

09:40:02 21 BY MR. DALSEN:
09:40:02 22 Q. Please state and spell your name
09:40:04 23 for the record, please.
09:40:05 24 A. My name is Andrew Samwick,
09:40:05 25 A-n-d-r-e-w, S-a-m-w-i-c-k.

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12:42:32 1 No. 3, "Compare the economic functioning of the
12:42:36 2 pre-June 2017 ERS with the PayGo system,
12:42:41 3 including the relationship between ERS employer
12:42:45 4 contributions and PayGo fees."

12:42:47 5 Do you see that?

12:42:48 6 A. Yes.

12:42:48 7 Q. And what is the relationship
12:42:54 8 between employer contributions and PayGo fees?

12:42:56 9 A. Over time ERS has built up an
12:43:04 10 actuarial liability. ERS employer
12:43:09 11 contributions in prior years were a way to
12:43:12 12 provide funding to meet that liability. Going
12:43:16 13 forward, PayGo fees are going to be a source of
12:43:18 14 funding to meet that liability.

12:43:19 15 Q. Is that the full extent of the
12:43:28 16 relationship between employer contributions and
12:43:30 17 PayGo fees, in your opinion?

12:43:34 18 A. Well, sure, there's sort of a
12:43:35 19 mechanical relationship between them in that
12:43:42 20 because ERS historically allowed for employer
12:43:47 21 contributions that were less than the
12:43:51 22 actuarially required contributions, the
12:43:54 23 remaining unfunded actuarially liability is
12:43:59 24 bigger.

12:43:59 25 So the PayGo fees that are going

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12:44:01 1 to be required, because the system has no
12:44:03 2 assets stored up, PayGo fees will be bigger.

12:44:10 3 So had ERS contributions been larger, PayGo
12:44:14 4 fees wouldn't have to be as large.

12:44:16 5 Q. But in your view, speaking as an
12:44:25 6 economist expert in this case, the relationship
12:44:27 7 between employer contributions and PayGo fees
12:44:31 8 is that they are both ways to meet a liability;
12:44:35 9 is that fair?

12:44:36 10 A. Yes.

12:44:36 11 Q. I think you've testified that you
12:44:45 12 reviewed Act 106 to prepare your report?

12:44:48 13 A. Yes.

12:44:48 14 Q. Under Act 106, are PayGo fees the
12:44:51 15 only source of revenue to pay pensions?

12:44:58 16 A. Well, the system has no net assets
12:45:00 17 left. So if there's another source of revenue,
12:45:04 18 I'm not aware of it.

12:45:06 19 Q. And when you say "the system,"
12:45:08 20 what do you mean?

12:45:09 21 A. So I think I'm speaking about ERS
12:45:15 22 and the benefit entitlements that were accrued
12:45:19 23 by participants in ERS during their working
12:45:23 24 lives.

12:45:24 25 Q. And in Paragraph 9 of your report

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12:51:58 1 the beneficiaries of the system, does that
12:52:00 2 guarantee affect any other aspect of your
12:52:02 3 opinions expressed in your report?
12:52:04 4 A. I don't believe so.
12:52:06 5 Q. And so the comparison that you're
12:52:16 6 drawing in your report, and now I am going back
12:52:19 7 to Paragraph 7, No. 3, the comparison that
12:52:22 8 you're actually drawing in your report only
12:52:24 9 concerns a comparison of employer obligations;
12:52:27 10 is that right?
12:52:27 11 A. Yeah, that's fair.
12:52:31 12 Q. And beyond comparing the economic
12:52:44 13 functioning as it relates to -- I'm sorry, one
12:52:48 14 moment.
12:52:49 15 A. Sure.
12:52:49 16 MR. DALSEN: If you're on the
12:52:50 17 phone, could you please make sure that
12:52:52 18 you're muted. Thank you.
12:52:56 19 Q. And so, Dr. Samwick, beyond
12:52:59 20 comparing the economic functioning as it
12:53:06 21 relates to employer contributions, you're not
12:53:10 22 performing any other comparison for purposes of
12:53:13 23 your report; is that right?
12:53:15 24 A. Could I just ask you to repeat
12:53:17 25 that?

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12:53:17 1 (Reporter read back pending
12:53:33 2 question)
12:53:33 3 A. Well, I -- okay. So trivially,
12:53:37 4 I'm also comparing the benefit entitlements.
12:53:40 5 So I would describe this as there's a question
12:53:43 6 about whether Act 106 change benefit
12:53:48 7 entitlements, and I describe that as trivially,
12:53:53 8 because it did not.

12:53:55 9 And then the second piece of the
12:53:57 10 comparison is whether there's an equivalence
12:54:04 11 between the employer contributions under ERS
12:54:08 12 and the PayGo fees. So I would answer your
12:54:11 13 question that way.

12:54:12 14 Q. But beyond comparing the employer
12:54:29 15 contributions under ERS and the PayGo fees, and
12:54:34 16 as you described it, the trivial comparison of
12:54:37 17 whether Act 106 changed benefit entitlements,
12:54:40 18 you're not performing any other comparison for
12:54:43 19 purposes of your report?

12:54:45 20 A. I think that's fair.

12:54:46 21 Q. When I asked you about the
12:55:15 22 Commonwealth guarantee in Act 106 a few minutes
12:55:20 23 ago, you said that, if I'm not mistaken, that
12:55:23 24 the guarantee would provide greater certainty
12:55:26 25 to the ultimate beneficiaries, right?

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01:16:01 1 A. Hmm-hmm.

01:16:01 2 Q. Now, the beginning of Paragraph

01:16:06 3 8(b) says, "For many years before 2017, ERS was

01:16:11 4 not actuarially sound."

01:16:12 5 What's the basis for that

01:16:14 6 statement?

01:16:14 7 A. It had an unfunded actuarial

01:16:23 8 liability, and contributions continued to be

01:16:25 9 inadequate to properly amortize that unfunded

01:16:29 10 actuarial liability and its funding ratio

01:16:35 11 generally continued to decline.

01:16:37 12 Q. You testified earlier that you're

01:16:43 13 not an actuary. So my question is, how are you

01:16:48 14 qualified to render that opinion?

01:16:49 15 A. I can do the calculations, and I

01:16:56 16 can observe the data that's presented in the

01:16:59 17 actuarial valuation report, and the actuarial

01:17:05 18 valuation reports, at various times, call

01:17:07 19 attention to it as well.

01:17:08 20 Q. So beyond performing calculations

01:17:11 21 and relying what's on -- excuse me, what's in

01:17:15 22 the actuarial valuation reports, was there

01:17:17 23 anything else you did to arrive at your

01:17:20 24 statement that ERS was not actuarially sound

01:17:23 25 for many years before 2017?

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01:28:27 1 system as an act enacted under 106 as a single
01:28:32 2 system for purposes of your analysis?

01:28:33 3 A. Yes, that's fair.

01:28:34 4 Q. Did counsel to Movants ask you to
01:28:38 5 assume they constitute a single system?

01:28:41 6 A. No.

01:28:41 7 Q. And you don't have an opinion
01:28:44 8 either way as to whether they are one system as
01:28:47 9 a legal matter; is that right?

01:28:50 10 A. That's correct.

01:28:51 11 Q. Is it fair to say that your
01:28:58 12 opinion only addresses a single system from an
01:29:03 13 economic perspective, in your view?

01:29:07 14 A. Yeah, and if I could explain, I
01:29:15 15 think the determination of benefits that
01:29:17 16 beneficiaries receive under the Act 106 system
01:29:22 17 is explicitly tied to the benefits that they
01:29:27 18 earned an entitlement to under ERS. That
01:29:33 19 hasn't been changed. That's what unifies them,
01:29:36 20 in my mind, as one system, because that's the
01:29:38 21 economic purpose of this public sector pension
01:29:41 22 system.

01:29:48 23 Q. And so if the Court in this case
01:29:59 24 found that ERS and the PayGo system were
01:30:03 25 separate systems, in your opinion would not

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01:30:06 1 apply at all in this proceeding after the Court
01:30:08 2 made that finding?

01:30:09 3 MR. PAPEZ: Objection. Calls for
01:30:13 4 speculation. It's an incomplete
01:30:15 5 hypothetical, and probably also calls
01:30:17 6 for a legal conclusion.

01:30:19 7 Q. Do you understand the question?

01:30:20 8 A. I do. I wouldn't mind you
01:30:22 9 repeating it, though, if you want me to answer
01:30:24 10 it.

01:30:24 11 (Reporter read back pending
01:30:41 12 question)

01:30:41 13 A. I do think that is asking me to
01:30:43 14 draw a legal opinion about what's relevant in
01:30:45 15 light of a judge's decision.

01:30:49 16 Q. If you were asked to assume that
01:30:56 17 the ERS system and the PayGo system were
01:30:58 18 separate systems, how would that affect your
01:31:02 19 opinion?

01:31:02 20 MR. PAPEZ: Objection. Incomplete
01:31:04 21 hypothetical.

01:31:04 22 A. Well, I don't -- I don't know who
01:31:07 23 I'm allowed to ask for clarifying questions in
01:31:09 24 this hypothetical. I would still note that the
01:31:16 25 benefits that beneficiaries will be paid under

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01:31:21 1 the Act 106 system are determined by the
01:31:24 2 entitlements that they earned while they were
01:31:26 3 working under ERS.

01:31:30 4 So that wouldn't change unless a
01:31:32 5 law changes it. It hasn't.

01:31:34 6 Q. And so your opinions, as expressed
01:31:49 7 in Exhibit 1, don't say either way, they don't
01:31:56 8 account for either way, what would happen if
01:31:59 9 the Court found that ERS and PayGo are separate
01:32:02 10 systems?

01:32:02 11 MR. PAPEZ: Objection. Asked and
01:32:04 12 answered and another incomplete
01:32:06 13 hypothetical.

01:32:06 14 A. I apologize, I don't really know
01:32:08 15 what you mean by "what would happen."

01:32:11 16 Q. Your opinions would not change
01:32:12 17 either way if the Court said that ERS and the
01:32:16 18 PayGo system were separate systems?

01:32:19 19 MR. PAPEZ: Same objections.

01:32:20 20 A. Yeah, they -- the economic
01:32:25 21 analysis would not change. The benefits being
01:32:30 22 paid to beneficiaries after Act 106 are still
01:32:35 23 determined by the benefits to which they earned
01:32:38 24 an entitlement under ERS.

01:32:47 25 Q. In Paragraph 8(d) of your report

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01:40:34 1 A. I do understand your question.
01:40:36 2 And again, I don't have a specific answer.
01:40:38 3 Q. And as far as value of the
01:40:43 4 payments that you discussed earlier, what
01:40:45 5 magnitude of change would there needed to have
01:40:48 6 been for you to conclude in this case that
01:40:50 7 there was a consequential change?

01:40:51 8 MR. PAPEZ: Object to form.

01:40:52 9 Incomplete hypothetical.

01:40:53 10 Q. I'll just ask, do you understand
01:40:55 11 my question?

01:40:55 12 A. I do understand your question.

01:40:58 13 Given that the benefits are not
01:41:00 14 going to change, and they're all going to get
01:41:03 15 paid, what room is there to say that there has
01:41:05 16 been a consequential change in the amount of
01:41:09 17 employer contributions.

01:41:12 18 There was a change in the timing
01:41:13 19 of when those contributions are going to be
01:41:15 20 made.

01:41:19 21 Q. But what magnitude of change would
01:41:23 22 you have needed to see to conclude that there
01:41:26 23 was a consequential change as to the value of
01:41:33 24 payments that you discussed earlier?

01:41:35 25 MR. PAPEZ: Objection. Asked and

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01:41:37 1 answered.
01:41:40 2 Q. If you can answer.
01:41:41 3 A. It would have to be something
01:41:42 4 other than the timing of those contributions to
01:41:44 5 pay benefits that haven't changed.
01:41:47 6 Q. And did you consider anything
01:41:50 7 other than the timing of those contributions to
01:41:52 8 pay benefits in order to determine whether
01:41:54 9 there was a consequential change, in your
01:41:57 10 opinion?
01:41:58 11 A. No. Only that the benefits didn't
01:42:02 12 change, and thus, the unfunded actuarial
01:42:06 13 liability is not going to change, and thus, the
01:42:09 14 net present value of contributions is not going
01:42:11 15 to change. All of that absence of change
01:42:18 16 seemed to be well described by inconsequential.
01:42:20 17 Q. For the purpose of rendering your
01:42:41 18 opinions in this report, did you apply any
01:42:44 19 framework accepted in the field of economics to
01:42:47 20 determine whether the effects that we have been
01:42:49 21 talking about were consequential or
01:42:51 22 inconsequential?
01:42:52 23 A. Everything we're doing here is
01:42:57 24 subsumed, incorporated in, net present value
01:43:02 25 analysis.

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02:00:04 1 about Paragraph 8(e) of your report on Page 6
02:00:08 2 of Exhibit 1. The last sentence of Paragraph
02:00:12 3 8(e) is where I want to direct your attention.
02:00:15 4 Specifically it says, "The changes
02:00:17 5 in how the PayGo fees on employers are
02:00:21 6 calculated are ones that could have been made
02:00:24 7 to required employer contributions within ERS,"
02:00:29 8 and then it says, "and they do not represent a
02:00:32 9 substantial change in the nature of the
02:00:34 10 payments."

02:00:34 11 Do you see that?

02:00:35 12 A. I do.

02:00:36 13 Q. Now, when you say the changes
02:00:43 14 could have been made, what do you mean?

02:00:44 15 A. So as I understand ERS, as written
02:00:47 16 in Act 447, contributions that are made that
02:00:51 17 are less than the actuarially required
02:00:54 18 contributions were for most of the life of that
02:01:00 19 system an obligation of the employer. So ERS
02:01:02 20 could have gone and gotten those contributions
02:01:05 21 that the employers were obliged to pay.

02:01:09 22 So what is the PayGo fee? The
02:01:11 23 PayGo fee is a contribution from the employer
02:01:15 24 for beneficiaries that has to be made because
02:01:21 25 of prior underfunding in ERS.

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02:03:45 1 A. No. All I'm trying to do is make
02:03:47 2 an assertion that the change to require
02:03:54 3 employers to now pay additional contributions,
02:03:57 4 or a PayGo contribution, is something that
02:04:01 5 could have been done at earlier times during
02:04:06 6 the ERS.

02:04:07 7 I'm not trying to draw any
02:04:09 8 conclusion other than that one, so that's why I
02:04:12 9 focus in on that possible change.

02:04:14 10 Q. And then the last part of that
02:04:16 11 last sentence in Paragraph 8(e) says, "And they
02:04:20 12 do not represent a substantial change in the
02:04:23 13 nature of the payments."

02:04:24 14 Do you see that?

02:04:25 15 A. Yes.

02:04:25 16 Q. What do you mean by "substantial
02:04:27 17 change"?

02:04:28 18 A. Well, they're both anchored in the
02:04:31 19 same entity. They are anchored in the pension
02:04:40 20 benefits that employees under ERS accrued prior
02:04:47 21 to 2017.

02:04:48 22 Q. When you say they are anchored in
02:04:51 23 the same entity, what do you mean?

02:04:56 24 A. The benefits were promised. They
02:04:58 25 could have been funded in advance. They

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02:05:00 1 weren't. To the extent that they were not
02:05:02 2 funded in advance, they now have to be funded
02:05:06 3 as they come due. Thus, you have a PayGo
02:05:11 4 system.

02:05:11 5 Q. And you don't consider that
02:05:17 6 process you just described to constitute a
02:05:20 7 substantial change?

02:05:21 8 A. Referring back to what begins the
02:05:24 9 paragraph, in economic terms, they are still
02:05:30 10 required to make employer payments, now called
02:05:32 11 a PayGo fee, previously an employer
02:05:35 12 contribution, to meet the pension obligations
02:05:38 13 that were accrued by their current and former
02:05:44 14 employees while those employees were
02:05:47 15 participants in ERS.

02:05:48 16 Q. And when you talk about the
02:05:53 17 "nature of the payments" in that last sentence
02:05:56 18 in Paragraph 8(e), what do you mean?

02:05:58 19 A. Well, the nature of the payments
02:06:01 20 is derived again from the benefits that were
02:06:05 21 accrued by employees working for various
02:06:13 22 employers under ERS.

02:06:14 23 Q. Do you know how PayGo fees are
02:06:36 24 calculated?

02:06:37 25 A. I have some understanding of it,

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02:06:41 1 sure.

02:06:41 2 Q. What's your understanding?

02:06:43 3 A. That employers are assessed a

02:06:45 4 PayGo fee based on the entitlements that their

02:06:51 5 system members accrued while working in their

02:06:53 6 employ.

02:06:53 7 Q. And do you know how required

02:06:59 8 contributions under the pre-June 2017 ERS were

02:07:03 9 calculated?

02:07:03 10 A. Again, I have some understanding.

02:07:05 11 Q. And what's that understanding?

02:07:06 12 A. That the amount of the actuarially

02:07:11 13 required contribution is the normal cost, plus

02:07:14 14 some amortization of the unfunded accrued

02:07:18 15 liability.

02:07:18 16 Q. And it's your opinion that those

02:07:33 17 two ways of calculating, in the one case, a

02:07:38 18 PayGo fee, and the other case, the required

02:07:41 19 contribution, do not constitute a substantial

02:07:43 20 change in the nature of payments?

02:07:45 21 A. Yes. I mean, that's made even

02:07:46 22 more clear by ERS now being closed with no

02:07:51 23 further benefit accruals. So this is just a

02:07:53 24 question of when that unfunded actuarial

02:07:59 25 liability is going to be drawn down to zero.

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02:08:01 1 In the Pay-As-You-Go process,
02:08:04 2 that's done basically as slowly as possible,
02:08:08 3 with no advance funding of any kind. Any other
02:08:12 4 system would bring in almost by definition some
02:08:16 5 more advanced funding.

02:08:18 6 The intent, if not the practice,
02:08:22 7 when ERS was operating prior to 2017 was that
02:08:25 8 there should be some advance funding.

02:08:34 9 Q. And your opinion is that the
02:08:39 10 change from a system with advance funding to a
02:08:43 11 system without any advance funding is not a
02:08:46 12 consequential change?

02:08:47 13 A. Keeping -- provided that the
02:08:55 14 present value of those payments is the same.
02:09:00 15 I'm acknowledging that the timing changes, but
02:09:04 16 the present value is anchored in the benefit
02:09:07 17 entitlements that employees accrued under the
02:09:10 18 ERS system.

02:09:12 19 So given that the benefits don't
02:09:14 20 change, and that employers under ERS are being
02:09:24 21 assessed a PayGo fee, based on those
02:09:27 22 obligations, yes, I call the change to be one
02:09:32 23 of timing only to be both inconsequential and
02:09:38 24 not substantial in this paragraph.

02:09:39 25 Q. So, economically speaking, if an

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02:10:11 1 employer reimburses the Commonwealth for
02:10:13 2 specific dollar amounts actually paid to
02:10:17 3 pensioners, is that the same or different from
02:10:20 4 an employer making a required contribution in
02:10:22 5 the pre-2017 ERS system?

02:10:25 6 MR. PAPEZ: I'm going to object to
02:10:32 7 form on that. Incomplete hypothetical.

02:10:37 8 A. I'm sorry, can you read it back to
02:10:39 9 me.

02:10:39 10 (Reporter read back pending
02:11:00 11 question)

02:11:00 12 A. It's the same employee or former
02:11:04 13 employee?

02:11:04 14 Q. Yes.

02:11:11 15 A. And the question is, does paying
02:11:13 16 it in 2019, when it comes due, versus 2015 or
02:11:15 17 2010 when it's accrued, is that -- can you fill
02:11:20 18 in the -- can you give it to me again, the
02:11:22 19 exact language?

02:11:23 20 MR. DALSEN: You can reread the
02:11:24 21 question again.

02:11:45 22 (Reporter read back pending
02:11:46 23 question)

02:11:47 24 A. Well, it's not identical, but it's
02:11:49 25 a payment made later, because a payment earlier

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02:11:52 1 wasn't made.
02:11:52 2 Q. Do you know whether, economically
02:12:05 3 speaking, under the PayGo system if all the
02:12:08 4 retirees of a given employer pass away, would
02:12:12 5 that employer have to pay future PayGo fees to
02:12:15 6 the Commonwealth?
02:12:16 7 MR. PAPEZ: Objection. Incomplete
02:12:18 8 hypothetical. Assumes facts not in
02:12:19 9 evidence as well.
02:12:20 10 Q. Do you know?
02:12:20 11 A. I don't know the answer to that.
02:12:22 12 Q. Economically speaking, under the
02:12:30 13 pre-June 2017 ERS system, if an employer had no
02:12:36 14 current retired employees, but did have active
02:12:40 15 employees on its payroll, would the employer
02:12:43 16 still have to contribute a percentage of
02:12:45 17 payroll in additional uniform contributions?
02:12:52 18 MR. PAPEZ: Object to form.
02:12:57 19 Incomplete hypothetical. Also assumes
02:12:58 20 facts not in evidence.
02:13:00 21 A. I apologize, can you read it to me
02:13:02 22 again?
02:13:02 23 (Reporter read back pending
02:13:24 24 question)
02:13:24 25 A. If he had active employees, that

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02:23:30 1 verbatim, to a paragraph we've already
02:23:33 2 discussed?
02:23:33 3 A. Yes.
02:23:33 4 Q. And when you use the phrase here
02:23:36 5 "could have been made," do you also mean a
02:23:38 6 non-zero possibility?
02:23:39 7 A. Yes.
02:23:54 8 MR. DALSEN: Okay. Let's just
02:23:56 9 take five minutes?
02:23:56 10 MR. PAPEZ: Sure.
02:23:58 11 VIDEOGRAPHER: The time is 2:24
02:23:59 12 p.m. We're now off the record.
02:24:01 13 (Recess taken at 2:24 p.m. and
02:24:05 14 reconvening at 2:32 p.m.)
02:31:26 15 VIDEOGRAPHER: The time is 2:32
02:31:30 16 p.m. We are now on the record.
02:31:32 17 BY MR. DALSEN:
02:31:32 18 Q. Dr. Samwick, you said earlier
02:31:34 19 today that you reviewed the rebuttal report
02:31:37 20 from Mr. Sher?
02:31:40 21 A. Yes.
02:31:40 22 Q. Did you reach any conclusions
02:31:42 23 after reviewing that rebuttal report?
02:31:45 24 A. I wasn't asked to draw any
02:31:49 25 conclusions.

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02:31:50 1 Q. Did you reach any conclusions,
02:31:51 2 regardless of whether you were asked to draw
02:31:53 3 them?

02:31:53 4 A. I didn't see how it had
02:31:58 5 invalidated or rebutted the conclusions I drew
02:32:01 6 in my own report.

02:32:02 7 Q. And why specifically did you feel
02:32:07 8 that way after reading Mr. Sher's report?

02:32:09 9 A. He objected to basically, I think
02:32:15 10 it's Paragraph 8(d), and I thought didn't
02:32:20 11 provide a very compelling counterargument.

02:32:25 12 Q. Any specific reason why he did not
02:32:27 13 provide a particularly compelling
02:32:28 14 counterargument, in your view?

02:32:30 15 A. I think you'd have to ask him.

02:32:35 16 Q. Okay. Did you disagree with any
02:32:39 17 of the methods that Mr. Sher used in his
02:32:42 18 rebuttal report?

02:32:43 19 A. You know, I would benefit from a
02:32:46 20 copy of it if we're going to have a long
02:32:50 21 discussion about it.

02:32:51 22 Do you have a copy I can see?

02:32:52 23 Q. Just answer my question. Do you
02:32:56 24 recall sitting here, without looking at the
02:32:58 25 report, whether you disagreed with any of the

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02:33:01 1 methods that Mr. Sher used in his rebuttal
02:33:05 2 report?

02:33:05 3 A. I'm having trouble coming up with
02:33:07 4 a particular method that he used.

02:33:08 5 Q. Okay.

02:33:08 6 (Document marked as Samwick
02:33:59 7 Exhibit 5 for identification)

02:33:59 8 Q. Dr. Samwick, you have been handed
02:34:05 9 what the court reporter has marked as Exhibit
02:34:06 10 5, which is the expert rebuttal report of
02:34:09 11 Lawrence J. Sher, dated June 12, 2019.

02:34:16 12 Now that you have the report, I'll
02:34:19 13 ask you do you recall, upon reviewing the
02:34:27 14 report, whether you disagree with any of the
02:34:29 15 methods Mr. Sher used in his report?

02:34:33 16 A. If I'm not going to have the time
02:34:34 17 to peruse it here, perhaps you could tell me a
02:34:37 18 specific method, and then I can answer you
02:34:41 19 about that specific method.

02:34:43 20 Q. You can take a moment to peruse
02:34:47 21 it.

02:35:14 22 A. Thank you.
02:35:14 23 So again, I don't see anything I
02:35:16 24 would describe as a method. So if you could
02:35:17 25 give me an example of a method, I could answer

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02:35:19 1 your questions about it.

02:35:20 2 Q. It appears, though, that you
02:35:31 3 disagree with the conclusions that Mr. Sher
02:35:33 4 reached, at least in some respects?

02:35:35 5 A. Well, his conclusions appear to be
02:35:39 6 I disagree with. So I don't think he has cause
02:35:42 7 to disagree, but that's his conclusion.

02:35:44 8 Q. And when you say you don't believe
02:35:50 9 he has cause to disagree, is there any
02:35:52 10 particular fault that you find with the
02:35:55 11 arguments and information that he provided in
02:35:58 12 his rebuttal report?

02:35:59 13 A. Well, the two places of
02:36:02 14 disagreement appear to be his Paragraph 23 and
02:36:08 15 his Paragraph 24.

02:36:16 16 So if I -- can I sort of walk
02:36:19 17 through 23 and 24?

02:36:20 18 Q. Yes, of course.

02:36:23 19 A. So the first claim made in
02:36:25 20 Paragraph 23 is that Mr. Sher disagrees with
02:36:29 21 the first sentence of what I think is Paragraph
02:36:34 22 8(d), "because under a Pay-As-You-Go approach
02:36:37 23 there are no contributions and no funding."

02:36:40 24 The specific statement with which
02:36:43 25 he's disagreeing is, "Conceptually, a change

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02:36:47 1 from a funded defined benefit system to a
02:36:50 2 Pay-As-You-Go defined benefit system is a
02:36:53 3 change only in the timing of the contributions
02:36:55 4 made by the sponsor of that system to support
02:36:58 5 benefit payments."

02:37:00 6 Okay. So I don't know how you can
02:37:03 7 say under a Pay-As-You-Go approach there are no
02:37:05 8 contributions. What is a PayGo fee if not a
02:37:08 9 contribution?

02:37:11 10 In economic framework, I would
02:37:14 11 regard a PayGo fee as a contribution. So we're
02:37:19 12 disagreeing about terminology there.

02:37:27 13 The statement, "There are no
02:37:28 14 contributions to fund a trust to pay for
02:37:31 15 participants' pension benefits" is true. But I
02:37:43 16 don't think it's a reason to disagree.
02:37:46 17 "Rather, pension benefits are made directly to
02:37:48 18 retired participants from general (i.e.,
02:37:51 19 non-segregated) assets as each payment comes
02:37:53 20 due."

02:37:53 21 I don't understand why it would be
02:37:57 22 proper to refer to PayGo fees as general
02:38:03 23 assets. That strikes me as odd. A PayGo fee
02:38:10 24 does not appear to be a general asset anymore
02:38:15 25 than an employer contribution under ERS was a

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02:38:16 1 general asset.
02:38:19 2 "Thus, the amount of money
02:38:21 3 required to pay the" benefits "must be
02:38:22 4 determined by calculating the amount of the
02:38:24 5 current pension payments."
02:38:28 6 Again, that's true, but that's not
02:38:30 7 a disagreement with the statement that I made.
02:38:33 8 Right? It's a change only in the timing of
02:38:35 9 contributions made by the sponsor. I sort of
02:38:41 10 acknowledged that the net present value of
02:38:43 11 those contributions, my word, are going to be
02:38:45 12 the same. They're going to equal the unfunded
02:38:49 13 actuarial liability because the system is
02:38:51 14 closed and no further benefits are being
02:38:53 15 accrued.
02:38:54 16 So I don't see how this is a
02:38:57 17 disagreement rather than just a refusal to
02:39:00 18 acknowledge that there are such thing as PayGo
02:39:05 19 fees, the way they are calculated, and the way
02:39:07 20 they will be paid off.
02:39:09 21 So I couldn't make much out of
02:39:11 22 this. I didn't feel like it was a critique.
02:39:16 23 So that's my response to his first
02:39:19 24 disagreement.
02:39:20 25 Shall I go on to my response to

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02:39:25 1 his second disagreement?

02:39:26 2 Q. Yes, please.

02:39:27 3 A. I disagree with the third

02:39:29 4 sentence, he says "because the cost of paying

02:39:32 5 benefits under a funded defined benefit system

02:39:33 6 can be materially lower in the long-term (when

02:39:36 7 compared to a pay-as-you-go approach) on

02:39:39 8 account of the earnings of the plan's assets."

02:39:42 9 That's just the simple math of net

02:39:45 10 present value. So again, that doesn't

02:39:48 11 contradict what I said. What I said is it's a

02:39:52 12 change only in the timing, earlier

02:39:54 13 contributions have a higher net present value

02:39:57 14 than later contributions.

02:39:59 15 So again, I didn't really see how

02:40:02 16 that, to the extent it's a true statement, but

02:40:06 17 it's part of what I was saying, not a

02:40:08 18 disagreement with what I was saying.

02:40:13 19 Okay. That's my -- I think that

02:40:15 20 answers your question.

02:40:16 21 Q. Yes. Thank you.

02:40:18 22 When you said for Paragraph 23

02:40:20 23 that you believe there were contributions, you

02:40:23 24 were talking about contributions in economic

02:40:24 25 terms. What is a contribution in economic

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02:40:27 1 terms?

02:40:28 2 A. I use the word "contribution" to

02:40:30 3 describe any payment made by the employer.

02:40:34 4 Q. Okay. Dr. Samwick, do you

02:40:50 5 understand you may be called for

02:40:51 6 cross-examination in this proceeding in New

02:40:53 7 York on July 2nd?

02:40:54 8 A. Yes.

02:40:54 9 Q. Where do you plan to be on July

02:40:57 10 2nd?

02:40:57 11 A. In New York available for

02:40:58 12 cross-examination.

02:40:59 13 Q. Okay.

02:41:07 14 MR. DALSEN: Okay. I think with

02:41:08 15 that, I just want to make a short

02:41:11 16 statement, then I'll pass the witness.

02:41:14 17 The short statement being that I have to

02:41:16 18 reserve the right to redepose

02:41:18 19 Mr. Samwick if there's, in fact, some

02:41:20 20 new declarations served on June 21st.

02:41:25 21 Matt, you mentioned something

02:41:26 22 about that earlier. I think we should

02:41:28 23 chat about that.

02:41:30 24 But to the extent that there is

02:41:32 25 some new declaration, you know, we have